STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE CONTEMPT OF KELLY MICHELLE DORSEY,
_____/

Supreme Court No. 150298

Court of Appeals No. 309269

PEOPLE OF THE STATE OF MICHIGAN,
Petitioner-Appellee,
v

Livingston CC Family Division:
No. 08-012596-DL

TYLER MICHAEL DORSEY,
Respondent,

and

KELLY MICHELLE DORSEY,
Appellant.
_____/

# AMICUS BRIEF OF ATTORNEY GENERAL BILL SCHUETTE

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## STATEMENT OF QUESTIONS PRESENTED

In its June 1, 2016 order granting oral argument on whether to grant the application for leave to appeal or take other actions, this Court asked the parties to address three issues:

1. Whether the family court lacked subject-matter jurisdiction to issue the order compelling the appellant to submit to random drug testing as part of her son's juvenile delinquency proceeding, see MCL 712A.6; *Jackson City Bank & Trust Co v Fredrick*, 271 Mich 538, 544–545 (1935).

   | | |
   |---|---|
   | Petitioner's answer: | No. |
   | Appellant's answer: | Yes. |
   | The Attorney General's answer: | No. |
   | Court of Appeals' answer: | No. |

2. Whether Michigan recognizes any other exceptions to application of the collateral-bar rule, including (a) lack of opportunity for meaningful appellate review of the January 14, 2011 drug-testing order; or (b) the appellant's irretrievable surrender of constitutional guarantees by complying with the drug testing order, see *Maness v Meyers*, 419 US 449 (1975).

   | | |
   |---|---|
   | Petitioner's answer: | No. |
   | Appellant's answer: | Yes. |
   | The Attorney General's answer: | No. |
   | Court of Appeals' answer: | No. |

3. Whether the appellant has properly preserved question (2) for appellate review.

   | | |
   |---|---|
   | Petitioner's answer: | No. |
   | Appellant's answer: | Yes. |
   | The Attorney General's answer: | No. |
   | Court of Appeals' answer: | No. |

## STATEMENT OF INTEREST OF ATTORNEY GENERAL AS AMICUS

The Attorney General is the chief law enforcement officer for the State of Michigan, and he supervises, advises, and consults the county prosecutors in the State. MCL 14.28; *People v Foster,* 377 Mich 233, 234 n 1 (1966). The Attorney General seeks to ensure that the proper standards are applied to the collateral-bar rule and to ensure that the exceptions to the doctrine are properly applied.

This Court has issued two orders in this case. In the first, it requested briefing in relation to its decision in *In re Hatcher,* 443 Mich 426 (1993) (establishing general rule against collateral challenges to previous judgments). In the second, it asked the parties to brief three questions related to collateral-bar rule. In their second supplemental briefs, both parties have cited *In re Kanjia,* 308 Mich App 660 (2014), a case in which the Attorney General served as counsel in addressing the retroactivity of *In re Sanders,* 495 Mich 394 (2014) (finding the one-parent doctrine unconstitutional). And this Court originally held this case in abeyance pending the disposition of the appeal in *In re Jones* (Docket No. 152595), subsequently vacated in 499 Mich 862 (2016), in response to a joint motion filed by the parties with the Attorney General serving as counsel for the Department of Health and Human Services.

In short, these are important questions, and ones in which the Attorney General has played a previous role in related cases. The Attorney General contends that this Court would be assisted by his briefing.

## INTRODUCTION

The Court has asked three questions in its order. The Attorney General agrees with the Livingston County Prosecutor's position on the first question that the trial court had jurisdiction over Kelly Dorsey in the juvenile delinquency proceeding, see MCL 712A.6, and on the third question that she failed to preserve the issue about the underlying order's validity because she did not object to the order. The Attorney General shall say no more on these points. On the second question about the collateral-bar rule, the Attorney General again agrees with the county but wishes to elaborate on the limited nature of the exceptions under Michigan law.

The collateral-bar rule forecloses a challenge to the validity of the underlying order from an appeal from a criminal contempt order. A person should not be able to decide not to appeal an adverse order of a court, flout that adverse order, be subject to a contempt judgment, and then seek to appeal the prior order in an appeal from the contempt judgment. The rule for Kelly Dorsey is the same as for everyone else, including the State, its agencies, and its employees. When ordered to act, a person must comply until the order is stayed, reversed, or modified. The proper remedy is to appeal the contested order. The collateral-bar rule prohibiting an attack on the underlying order is designed to protect the rule of law. While this Court should adopt exceptions for orders that are not appealable and for cases in which compliance would cause irreparable injury, these exceptions have limited application in Michigan.

For non-appealable orders, unlike the federal system, Michigan broadly allows appeals from interlocutory orders. A non-party, such as Dorsey, could have sought to file an application for leave after contesting the order. Nothing stopped her from doing so. This is the ordinary process in Michigan, and is typical for any non-party, whether a party, a witness, or a parent under the court's jurisdiction. The fact that she had no counsel of her own is also not uncommon and does not change the result. She was not entitled to appointment counsel before the criminal-contempt proceeding. Under Dorsey's proposed standard, every time a court ordered a non-party without counsel to take some action – whether a juror, a witness, or a spectator – the court would be bound to appoint counsel contemporaneously to allow that person to file an interlocutory appeal. Nothing in law requires that process.

For compliance that would result in irreparable injury, that is a rare circumstance under Michigan law. Again, unlike the federal system, a person may take an immediate interlocutory appeal and not wait until the case or investigation reaches final resolution to bring an appeal. And this case did not involve the right against self-incrimination, which the U.S. Supreme Court identified as a unique privilege with ancient roots for this exception, but rather the Fourth Amendment. There is nothing unusual about complying with an order as here – requiring a drug test – as compared to complying with a search warrant for property or for a blood test. A person subject to a facially valid court order can later contest it, but has no right to refuse to comply with the order. Any other rule would be a recipe for lawlessness.

## STATEMENT OF FACTS AND PROCEEDINGS BELOW

The Department of Attorney General agrees with the Livingston County Prosecutor's Office statement of facts and proceedings.

## ARGUMENT

### I. The collateral-bar rule blocks challenges to the underlying order from a contempt judgment, unless the court lacked jurisdiction or the contemnor could not otherwise challenge the order.

This case fits within the traditional paradigm of the collateral-bar rule: a contemnor cannot violate an order of the court and then seek an appeal after being found in contempt. Rather, the person subject to the court's order must either seek pre-compliance review or object to the order and then seek appeal after complying with the order. Kelly Dorsey did neither of these things. While Michigan should recognize the exceptions for an order that is not appealable and for the case in which a party would suffer irreparable injury for compliance, neither exception is implicated in this case. This Court should affirm the decision of the Court of Appeals.

#### A. The general prohibition from the collateral-bar rule forecloses an attack on the underlying order on appeal from a contempt judgment.

The rule of law requires obedience to orders of the court that are facially valid. The State, its agencies, and its employees are frequently subject to orders that it contends were not justified in law. Nonetheless, the State complies with these orders and then seeks review (and, when necessary, a stay). That is the proper process. Any other process would foster a disrespect for the authority of the judicial system and the orders that the courts issue. The same standards apply to private parties and ordinary citizens like Kelly Dorsey.

For that reason, the rule in Michigan is that "a party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt." *Kirby v Mich High Sch Athletic Ass'n,* 459 Mich 23, 40 (1998). This is a principle of long standing, requiring a party to obey the order of the court or otherwise be subject to a contempt action. See, e.g., *Kaiser v Kaiser,* 213 Mich 660, 662 (1921) (the party was subject to a contempt action for failing to pay alimony to which "attached the duty of the defendant to obey the order and decree of the court"). The obligation to obey attaches even to "improperly granted" orders because the duty to honor the court's authority remains until the order is "dissolved" and any failure to accede constitutes contempt. *Rose v Aaron,* 345 Mich 613, 615 (1956) ("Although the temporary restraining order was improperly granted, it should have been obeyed until dissolved and the court had the power to punish disobedience thereof as for contempt.").

As a caveat, this Court has recognized that where the court suspended the sentence "to permit an appeal," that court was not "called upon to protect its dignity by resentencing defendant for violation of a temporary restraining order improperly entered." *Id.* at 615, citing *Holland v Weed,* 87 Mich 584, 588 (1891) (while stating that an order of the court should be obeyed, a court was "not called upon to protect [its] dignity" where the order was obtained by "fraud" when the "orders of the court have been prostituted by unworthy methods in seeking unworthy ends"). Nonetheless, the duty of obedience remains.

With respect to the rule that a party must obey the orders of the court, the Court of Appeals has recognized the corollary principle that rejects a party's effort to challenge the validity of the underlying order in an appeal from the contempt judgment. See *In re Contempt of Johnson*, 165 Mich App 422, 427 (1988) (rejecting a challenge to the constitutionality of Salem Township's ordinance because the appeal was taken from the order holding Johnson in contempt).[1] This is the general common-law rule. See 4 Am Jur 2d § 197, Contempt ("An appeal from a contempt order which is jurisdictionally valid does not entail review of a prior order for the violation for which the contempt order was issued").

Rather, the proper process is to seek an appeal from the order itself. The U.S. Supreme Court has explained the point that in the absence of a stay, the general rule demands compliance with the order while the appeal is pending. See *Maness v Meyers,* 419 US 449, 459 (1975) ("a person to whom a court directs an order believes that order is incorrect *the remedy is to appeal*, but, absent a stay, *he must comply promptly with the order pending appeal.*") (emphasis added). While there are exceptions, the basis for this rule requiring obedience to a court's orders is respect for the rule of law. *Id.* at 459. ("The orderly and expeditious administration of justice by the courts requires that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed"). Yet here, Dorsey did not seek to appeal her order before refusing to comply.

[1] Unlike *Johnson,* which involved a civil contempt order, the federal courts limit the application of the collateral-bar rule to criminal contempt. See, e.g., *U.S. v Hendrickson,* 822 F3d 812, 821 n 2 (CA 6, 2016).

And the collateral-bar rule generally arises from contempt appeals where the prior order is an ancillary one to another proceeding, such as (1) a violation of the order enforcing the judgment, see *Mich Trust Co v McNamara,* 182 Mich 424, 430 (1914) (violation of an injunction by a party), (2) the violation of an order during a trial, see *In re Contempt of O'Neill,* 154 Mich App 245, 248 (1986) (attorney's insistence on further contesting a ruling over the trial court's threat of contempt was an "affront to the discipline and decorum of the court"), or, as here, (3) a violation of an order by a non-party during an ongoing juvenile-delinquency civil proceeding.

It is not uncommon for the person subject to the order to be without counsel. Among its many provisions, the Michigan contempt statute authorizes a court to punish "all other persons" for disobeying a lawful order of the court and any person who is required to appear by subpoena who refuses to appear or to answer questions. MCL 600.1701(g) (disobeying a lawful order), (i) (person who has been subpoenaed). The orders typically direct a party to produce discovery, a non-party witness to testify or produce documents, or an attorney to answer for that attorney's conduct during the trial. For persons without counsel, a cursory review of the contempt appeals in this Court includes cases against witnesses for their contemptuous conduct before a grand jury or trial court:

- False answers during a trial by a witness. *McCarthy v Wayne County Circuit Judge,* 294 Mich 368, 372–375 (1940);
- Refusal of a witness to answer questions before a grand jury, *In re Selik,* 311 Mich 713, 718 (1945), and *In re Watson,* 293 Mich 263, 269 (1940); and
- Refusal to appear as a witness. *In re Wilkowski,* 270 Mich 687, 688 (1935).

For Dorsey, there is no dispute that she received notice of the order and that she ultimately defied it. She was ordered to undergo random drug testing in 2011, and she complied with this order. In 2012, the trial court required that Dorsey be drug tested twice a week for 90 days, and she refused to comply. This refusal meets the elements of criminal contempt. *In re Contempt of O'Neill,* 154 Mich App at 247 (criminal contempt requires proof of (1) willful disregard or disobedience of the court, and (2) contempt must be clearly and unequivocally shown), citing *People v Matish,* 384 Mich 568, 572 (1971). It is clear that the contempt decision was a criminal one by the fact that the penalty was imposed to punish "past misdoings," as contrasted with civil contempt, which is designed to change the person's conduct so as to purge the contempt. *State Bar v Cramer,* 399 Mich 116, 127 (1976), overruled on other grounds, *Dressel v Ameribank,* 468 Mich 557, 562 (2003). Thus, as asked by the Court, the question is whether Dorsey can challenge this order, i.e., whether Michigan recognizes exceptions to the collateral-bar rule that apply here.

### B. While the rule includes an exception for orders that were not appealable, the exception is inapplicable here as Dorsey could have appealed the order.

Like the Livingston County Prosecutor, the Attorney General agrees that the collateral-bar rule foreclosing review of an underlying order does not apply where (1) the order was entered without jurisdiction and was void; (2) the contemnor was effectively unable to seek an appeal of the order; or (3) the contemnor would otherwise be subject to "irreparable injury" if the person complied with the order. Each of these exceptions is limited in Michigan, and none of these exceptions apply here.

For the first exception (jurisdiction), this principle is consistent with this Court's decision in *Jackson City Bank & Trust Co v Fredrick,* 271 Mich 538 (1935), which allows collateral attacks on a final judgment where that decision was void because of a lack of jurisdiction. *Id.* at 544–545 ("When there is a want of jurisdiction over the parties, or the subject-matter . . . , the action thereof is void because of its want of jurisdiction, and consequently its proceedings may be questioned collaterally as well as directly."). And the basic rule as provided by the second edition of American Jurisprudence also conditioned the collateral-bar rule on the contempt judgment being "jurisdictionally valid." See 4 Am Jur 2d § 197, Contempt. For the reasons stated in the Livingston County second supplemental brief, the Attorney General agrees that the trial court had jurisdiction over Kelly Dorsey under MCL 712A.6. Therefore, this exception is not applicable.

For the second exception (order not appealable), the Michigan courts have not expressly addressed the point. But the federal courts have made clear that the exception is not applicable where the contemnor could have filed an appeal but failed to do so. See, e.g., *United States v Cutler,* 58 F.3d 825, 832–833 (CA 2, 1995) (rejecting as without merit the claim that "there was no appealable order until he was held in contempt"). In fact, in *Cutler,* the Second Circuit listed the other types of actions that the contemnor could have filed in addition to an appeal:

- "he could have sought mandamus," *id.* at 833;
- "Cutler could have sought a declaratory judgment striking down the [local rule], upon which the orders were based," *id.*; and
- "Cutler could have asked Judge Glasser to modify the orders." *Id.*

In this way, the contemnor could have (1) appealed, (2) sought mandamus, (3) filed a declaratory action; and (4) sought modification of the order, but Cutler did not do these things. Significantly, in *Cutler,* the contemnor there claimed that the local rule was unconstitutional, forbidding him to comment to the press during the trial of the notorious New York mobster, John Gotti. *Id.* at 832. Despite the fact that the claim was a constitutional one, the court refused to reach the issue in the contempt appeal because the collateral-bar rule foreclosed review. The same applies here.

In short, Dorsey could have taken similar actions here on her constitutional challenge to the validity of the drug-testing order:

(1) Dorsey could have filed an application for leave under MCR 7.205;

(2) Dorsey could have filed a declaratory judgment action under MCR 2.605 *et seq.*; and

(3) Dorsey could have sought a request to modify the order, MCR 2.119(F).

But she did none of these things.

In fact, the most direct point is the first option, i.e., Dorsey could have filed an interlocutory appeal. It is not a point in dispute. Michigan's law on applications for leave is permissive, and the case would have been properly captioned as an "In re" action with Kelly Dorsey in the primary caption, and the secondary caption as the juvenile-delinquency proceeding involving her son, Tyler Dorsey. This is no different than the circumstance in which a witness seeks an appeal from an order requiring his appearance or his testimony at a grand jury or trial. See, e.g., *In re Selik,* 311 Mich at 714 (witness's refusal to testify before one-man grand jury).

Dorsey's primary thesis that she is entitled to this exception is that she was not appointed an attorney at the time that the court ordered her to undergo regular drug testing. See Dorsey' second supp brief, pp 14–18. The Livingston County Prosecutor notes that Dorsey was represented by counsel in another proceeding and thus could have relied on that counsel or on her son's attorney in this proceeding. See Livingston County's second supp brief, pp 2–3. While Livingston County's point is right, this Court need not rely on this fact. Even in the absence of these attorneys, the rule would still apply. Dorsey was not entitled to appointed-counsel at the time that she was ordered to submit to drug testing, which was not a criminal order. Her right to seek review was unimpeded. The assertion that the only time a person has a meaningful opportunity to appeal from such an order – just as an order for a witness to appear or to testify – is where that person has been appointed counsel is unfounded. The court need not appoint counsel for every non-attorney to whom an order is given, whether that person be a witness, a juror, a spectator in the courtroom, or the mother of a respondent subject to juvenile-delinquency proceedings.

By law, a contemnor does have a right to counsel at a criminal contempt proceeding. *United States v Dixon,* 509 US 688, 696 (1993), citing *Cooke v United States,* 267 US 517, 537 (1925). The trial court here respected that right by appointing Dorsey counsel on February 2, 2011, before the criminal contempt proceeding. But it had no obligation to appoint counsel for her before that contempt proceeding so she could appeal the order.

While there is a right to appointed counsel for criminal cases, there is no such automatic right for counsel generally in civil cases, even where the civil litigant is facing incarceration for contempt. See *Turner v Rogers,* 564 US 431, 449 (2011) (no automatic right to counsel for civil contempt proceeding in child-support case where the contemnor was sentenced to twelve months in jail for failure to pay child support). In fact, this Court held to the contrary in 1990 ruling that it was automatic if facing incarceration, see *Mead v Batchlor,* 435 Mich 480 (1990), but this decision was abrogated by the decision in *Turner.* See *Turner,* 546 US at 438.[2]

Rather, the rule is that there is a presumption against the appointment of counsel for an indigent person unless the proceeding is one in which that person may be incarcerated and thus deprived of his liberty. *Lassiter v Dep't of Soc Serv of Durham Co,* 452 US 18, 27 (1981). But the proceeding here was not one in which Dorsey was facing the loss of her liberty. Instead, the order against her was ancillary to the proceeding, which was against Dorsey's son. In other words, Dorsey was not facing incarceration for anything other than her contempt of the court's orders in that proceeding. It is analogous to the police executing a search warrant against a target of their investigation, or a suspect being ordered to appear before a grand jury or an investigative hearing, or a witness subpoenaed to testify at trial. All of these persons are subject to an order, but none is automatically entitled to counsel.

[2] In contrast, this Court has held that a person who refuses to testify before a grand jury, invokes his Fifth Amendment privilege against self-incrimination, and as a result may be subject to civil contempt is entitled to the appointment of counsel. See *People v Johnson,* 407 Mich 134, 143 (1979). The decision appears to remain good law.

And that makes sense. It happens all the time that a person subject to the court's authority is subject to an order without the court correspondingly having to order the appointment of counsel. The Michigan contempt statute lists a host of persons subject to the court's authority, including attorneys, counselors, clerks, registers, sheriffs, coroners, witnesses, jurors, and "all other persons" who are subject to "any lawful order, decree, or process of the court." See MCL 600.1701.

Dorsey's claim is that the legal avenues available to her are not "meaningful" unless she is appointed counsel. But the legal system is predicated on the understanding that ordinary citizens have the obligation to defend their rights and seek the proper redress without appointed counsel – even where indigent – when that proceeding is one that will not result in the loss of liberty. Cf. *Lassiter,* 452 US at 27. The second exception does not apply.

Insofar as Dorsey relies on the line of cases distinguishing *In re Hatcher,* 443 Mich 426 (1993), the cases are inapposite. This line of precedent is distinct from, but related to, the Michigan rule that prohibits the collateral challenge of a final judgment in a subsequent proceeding. In *Hatcher,* this Court held that a party could not challenge the probate court's valid exercise of jurisdiction over children in a parental-neglect case in an appeal from the parent's termination of parental rights. *Id.* at 444. The parent has the obligation to bring a direct appeal from the probate court's original decision, and not wait until years later as a "collateral attack" where a direct appeal "was available." *Id.* The rule preventing a challenge to an ancillary order, such as the one here, is predicated on the same legal analysis.

The exception to the *Hatcher* rule is also consistent with the reasons that Dorsey is subject to the collateral-bar rule. In its September 30, 2015 order, this Court asked for briefing on whether the appeal from the criminal contempt order constituted an "impermissible collateral attack" on the drug-test order based on *Hatcher*. Later, this Court held the case pending the application of *In re Jones* (No. 152595). See Dec. 23, 2015 order. The decision in *Jones,* as well as the decision in *In re Kanjia,* 308 Mich App 660 (2014), addressed *Hatcher* in light of *In re Sanders,* 495 Mich 394, 422 (2014). And in *Kanjia,* the Court of Appeals concluded that *Hatcher* was inapplicable because the parent was not a party to the order establishing jurisdiction and so it would have been "exceedingly difficult, if not effectively impossible, for [the parent] to have challenged the trial court's exercise of jurisdiction in a direct appeal from the order of adjudication." *Kanjia,* 308 Mich App at 670, citing *Sanders,* 495 Mich at 419 ("as a nonparty to those proceedings, it is difficult to see *how an unadjudicated parent could have standing to appeal any unfavorable ruling*") (emphasis added). The inability to appeal was the key.

This analysis is consonant with the principle in this case that Dorsey was able to appeal the drug-testing order. There is a fundamental difference between (1) a case in which one is not a party, where the interested parent was therefore without authority to appeal (absent intervention) as in *Sanders* and *Kanjia*, and (2) one in which the order is directed at the person herself – making her the sole party – and thus she has a right to seek an interlocutory appeal. It is like night and day. Because Dorsey could have appealed, the second exception does not apply.

### C. The exception that allows for a challenge to the order after a contempt judgment if compliance would result in "irreparable injury" is not applicable here.

For the third exception (irreparable injury), the party is able to both defy the order and seek the review of the order because compliance would cause "irreparable injury." Dorsey has advanced this argument predicated on the analysis from *Maness,* 419 US at 460, and *U.S. v Ryan,* 402 US 530, 532–533 (1971). See Dorsey's second supp brief, pp 18–23. While the Attorney General agrees that this exception should be adopted under Michigan's common law if a case presenting that situation arises, the rule's justification under federal law is different than here, because federal law does not allow appeals from non-final orders while Michigan does. The basis for this exception in *Maness* is that compliance in some circumstances can never be remedied if the order is later found to be unwarranted – the "appellate courts cannot always 'unring the bell' once the information has been released." 419 US at 460. While there are cases in which that is true, this is not one of them, as Dorsey would not suffer irreparable injury in complying. There are three points.

***First***, the U.S. Supreme Court placed this "method of achieving precompliance review" as being one "particularly appropriate" for the Fifth Amendment privilege against self-incrimination, giving it special consideration. *Id.* at 461. See also *In re Establishment of Hern Iron Works,* 881 F2d 722, 728 (CA 9, 1989) ("the exception has not extended beyond the limited confines of self-incrimination"). The order requiring drug testing implicates the Fourth Amendment, not the Fifth. The U.S. Supreme Court's granting special status to the "ancient" protection against self-incrimination, see *Maness,* 419 US at 461, is not at issue here.

***Second***, Michigan law allows for interlocutory appeals, including of the order requiring Dorsey to submit to drug testing. See MCL 600.309; MCR 3.993(B) (appeals from juvenile proceedings); MCR 7.203(B) (allowing appeals from an "order of the circuit court . . . that is not a final judgment"). In contrast, the federal courts generally do not allow interlocutory appeals unless certified by the district court for review. 28 USC 1292(b) (may certify order involves controlling question of law).[3] So, the Supreme Court in *Maness,* 419 US at 260, was addressing the point that these interlocutory orders would *not be subject to review until the end of the case unless the party defied the order and then was subject to a contempt order, which is a final order subject to immediate appeal.* See also *Ryan,* 402 US at 532 ("one to whom a subpoena is directed may not appeal the denial of a motion to quash that subpoena but must either obey its commands or refuse to do so and contest the validity of the subpoena if he is subsequently cited for contempt on account of his failure to obey"). In addition to *Ryan,* the cases on which *Maness* relied for this point were also ones in which the court was without jurisdiction to review. See, e.g., *Cobbledick v U.S.,* 309 US 323, 330 (1940) (affirming dismissal of the appeal challenging motion to quash subpoena duces tecum); *Alexander v U.S.,* 201 US 117, 122 (1906) (appeal dismissed for lack of jurisdiction for appeal from a court directing witness to answer questions and produce written evidence). Such a delay in review is the effect of the federal rule against interlocutory appeals.

[3] The exceptions to the general prohibition on interlocutory appeals include injunctions, 28 USC 1292(a)(1), and denials of governmental immunity, *Mitchell v Forsyth,* 472 US 511, 530 (1985).

That is not true in Michigan. Michigan does not create this Catch-22 of either complying and waiting a long duration before review or defying the order to obtain immediate review. Instead, a non-party person (like Dorsey), who is subject to an order can take an immediate appeal. And a party may also seek immediate consideration, see MCR 7.211(C)(6), and the Court of Appeals will resolve the question with expedition. As a consequence, Michigan law has no reason to allow defiance of the law to enable expeditious review of ancillary orders.

***Third***, there is nothing special or unique about the need to comply with the kind of order here. The analogous circumstance is present where a party is subject to a subpoena to appear or produce documents and does not believe the order is justified. The party is not free to ignore the order. In that situation, the party is bound to move to quash the subpoena or be held in contempt. See *In re Wilkowski,* 270 Mich at 688. The same is true of a search warrant. The idea that a person could defy the order if that person believes the order unconstitutional is untenable. It would foster a disrespect for the law and create "turmoil" for the justice system:

> The defendants suggest that a Warrant of Inspection does not mandate compliance, but instead merely protects the agents conducting the search in case force is required to carry it through. This cuts against all notions of law and order, and sets the stage for an obviously intolerable confrontation in every case in which a search warrant is issued.
>
> The defendants' actions in resisting the Warrant of Inspection could have subjected them to liability for Criminal Contempt, as well as to criminal liability[.]. The fact that the Warrant was ultimately invalidated is no defense to such liability. Similarly, the fact that refusal was undertaken upon the advice of counsel is of no moment. *The criminal justice system would be thrown back into a state of turmoil were this Court to sanction a person's private determination of the invalidity of a search warrant, and a subsequent refusal to peacefully abide by it.*

> [See *Becton, Dickinson and Co v Food & Drug Admin,* 448 F Supp 776, 780 n 6 (ND NY, 1978) (citations omitted).]

Stated differently in another case in which the person refused to comply with a search warrant, "although both counsel and litigant may exercise their right to object to a court ruling and may vigorously advocate their positions before the appropriate tribunal, both the dignity of the court and the orderly functioning of the judicial system necessitate prompt adherence to the writ of the court." *In re Establishment Inspection of Hern Iron Works,* 881 F2d at 727–728. As a result, the court held that Hern could not challenge the judicial order as a defense to the contempt charge, which was identified as the "ordinar[y]" rule. *Id.* at 726, 729. See also *Cutler,* 58 F3d at 832 ("a party may not challenge a district court's order by violating it").

In the final analysis, the proper remedy was for Dorsey to file an appeal seeking to block the order. Otherwise, like everyone else including the state, its agencies, and employees, she was bound to obey the order of court with proper jurisdiction until reversed or modified. If the order were reversed on appeal, any adverse actions against her in the juvenile-delinquency proceeding would be remedied. This a routine matter and is not at all one of those rare circumstances in which an appellate remedy would ring hollow because the damage would have been incurred irreparably. This Court of Appeals properly ruled on this issue.

## CONCLUSION AND RELIEF REQUESTED

This Court should affirm the decision of the Court of Appeals.

Respectfully submitted,

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Dated: October 31, 2016